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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

SANDRA CHEW, Plaintiff and Appellant, v. WILLIAMS LEA, INC., Defendant and Respondent.	A124709 (San Francisco County Super. Ct. No. 463769)

Appellant Sandra Chew sued her former employer, respondent Williams Lea, Inc., after she was fired for falsifying a time entry. She argues that the trial court erred in granting summary adjudication as to her retaliation cause of action, because there was a triable issue of material fact that the reason given for her discharge was pretextual. We disagree and affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Respondent provides "corporate information solutions to a variety of businesses and industries." In January 2006, the company began providing document processing services to the law firm Heller Ehrman LLP in San Francisco pursuant to a vendor contract. Appellant, who had worked at Heller Ehrman since 1986, was hired by respondent on January 23, 2006, and continued to work at the law firm's San Francisco office. She worked in respondent's document processing center, which was known as "the 'DOCS Center.' " Several months after respondent hired appellant, she was

promoted to the position of workflow coordinator. On August 7, 2006, Charlotte Dolly became the manager assigned to oversee respondent's support services for Heller Ehrman's San Francisco office.

Respondent used a computer-based timekeeping system known as "Kronos." Employees were required to " 'punch' into" the system at the beginning and end of their shifts, as well as for lunch breaks. If Kronos was down for some reason or employees forgot to punch into or out of the system, they were supposed to make a written entry in the " 'Kronos Problem Log' " indicating the time that should be entered into the system for a given date. On August 11, 2006, Dolly sent an e-mail to respondent's employees, including appellant, explaining that employees were to use the problem log.

Appellant was scheduled to begin work at 6:00 a.m. on March 27, 2007. She and a co-worker, Jude Delgado, were carpooling to work and encountered heavy traffic. Delgado called the workflow coordinator at the DOCS Center to inform her that they would be late. They entered the building at 6:19 a.m., and appellant logged on to her work computer at 6:23 a.m. According to appellant, she realized around 8:00 a.m. that she had forgotten to log into Kronos, and she could not remember exactly when she and Delgado had arrived. She made entries for both of them in the Kronos problem log. Appellant dated the entries "3/27." Under the column titled "Time of Log Entry," appellant wrote "6 a" for both herself and Delgado. Under the column titled "Description of Problem," appellant wrote, "Forgot to punch." Appellant later explained, "I made incomplete entries in the Problem Log for both of us, leaving a space between the '6' and the 'a' that I was going to fill in later, because I was not sure of the exact time

we arrived, and intended to ask Mr. Delgado when we arrived."[1] According to appellant, she "was distracted by other work and never filled in the rest of the time. That is, I forgot to go back and enter the minutes portion of my entry, so it still read '6 a.' " She further explained that it was her usual practice to enter the minutes, and not just the hour, when she made an entry in the problem log, and she did not intend to conceal the fact that she was late on March 27.

Katie Garcia, a senior document specialist who had been hired by Dolly, brought the Kronos log to Ms. Dolly the same day, on March 27. Garcia told Dolly that appellant and Delgado had called in to say they were running late, and that their log entries were incorrect. Dolly contacted human resources manager Joe Hebel on March 27 and asked what she should do, because she felt that appellant and Delgado had falsified their time sheets. Hebel told Dolly that falsifying a time record was a terminable offense, and that Dolly should gather any supporting documentation.[2]

Dolly obtained records from building management that indicated that appellant and Delgado entered the building at 6:19 a.m. on March 27. She obtained records from Heller Ehrman's IT department that showed that appellant logged on to her computer at 6:23 a.m. Based on those records, Dolly concluded that appellant had falsified her Kronos time entry to make it appear as if she had not arrived late to work, because the entry "clearly indicate[d] to [her] that they [were] making an entry at 6:00 o'clock a.m."

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1 We read this declaration to mean that appellant did not speak with Delgado before writing their names in the log, and that she intended to speak with him later. However, appellant testified at her deposition that she told Delgado before she wrote in the problem log that she "was going to write for both of us since we both came in at the same time." She also testified, "I filled this [the log] in as much as I could first and then I went back and I asked him [Delgado] exactly what time we came in." He told her that it was around 6:15 or 6:20 a.m., but they started discussing work and she forgot to go back and complete her log entry.

2 A national senior director for human resources stated in a declaration that respondent learned in January 2007 about a Department of Labor investigation concerning the accuracy of its employee time records. After learning of the investigation, respondent "treated time card falsification as a serious and terminable offense."

On either March 27 or 28,[3] appellant met with Dolly and Garcia to discuss concerns about appellant's work performance that were unrelated to the March 27 time entry. Dolly and Garcia addressed appellant's failure to follow written procedures regarding saving desktop publishing jobs. The problems discussed in the meeting came to light when appellant was absent from work in early March, and other DOCS Center employees were unable to locate certain documents that appellant had been working on. At the meeting, Dolly gave appellant a performance review that stated that appellant had not followed written instructions regarding desktop publishing jobs, despite multiple reminders to follow the written procedures. Appellant testified that the meeting took place toward the end of her scheduled work shift, around 2:00 p.m.

At the end of the meeting, Dolly asked appellant if there was anything else appellant wanted to discuss. Appellant told Dolly that it was "very obvious" that there was "favoritism in the department." She testified at her deposition that she told Dolly, " 'There were certain people in the department that it's obvious to them that the people that you hired, the newer people coming in, your friends from your previous law firm, you have friendships there. They're newer. They're younger. They're separated in the department from the older people, myself, Jude, Abbie, the people that were grandfathered into the department with their years of service.' " She told Dolly that " '[i]t seemed like there was a separate set of rules for the two different people, the newer people and the older people.' " When asked to explain to whom appellant was referring when she used the word " 'younger,' " appellant testified that she meant the people who came from a different law firm. When asked why she thought the newer employees were

[3] According to Dolly, the meeting took place on March 28, which is the date that appears on appellant's written performance review, or "Performance Improvement Process." Appellant first testified at her deposition that the meeting took place "right around" March 27. When she was shown a copy of her performance review dated March 28, appellant testified that the meeting "[a]pparently" took place on that date, but she later said she was "not sure" if March 28 was the correct date, and that her personal calendar might show the meeting took place on March 27. Appellant stated in her declaration that the meeting took place on March 27, and she attached a copy of her personal calendar indicating a meeting with Dolly took place on that date.

being treated differently, appellant testified, "Well, they were younger than, I would say, the people that grandfathered over from Heller Ehrman. It was pretty obvious. I don't know if that's the reason why they were treated differently. They may have been treated differently because of association," meaning they were friends from their prior employment. Appellant stated in her declaration: "I told Ms. Dolly how I saw that she replaced all of the older employees with younger people that were her friends. Then, I told her that I thought it was clear that there were two sets of rules, [one] for us older employees and [one] for the younger employees she was bringing in, regarding timeliness and paid time off, and more generally, that she was holding us older employees under a microscope, and punishing us for even minor infractions." Dolly denied during the meeting that there was favoritism.

At 5:30 p.m. on March 28, Dolly wrote an e-mail to human resources manager Hebel (with a copy to Scott Spranger, respondent's national client services director), attaching the requested supporting documentation regarding appellant's March 27 time entry. The e-mail stated that Dolly had spoken with Spranger, and that together they had decided it was necessary to terminate both appellant and Delgado for falsifying their time records. Respondent's national senior director for human resources approved the termination.

Dolly, Hebel, and Spranger met with appellant on April 4, 2007, and appellant was terminated. During the termination meeting, Spranger explained to appellant that they had concluded that appellant had falsified her March 27 time entry. This was the first time that anyone at Williams Lea had spoken with appellant about the falsification of the time record. Delgado also was fired the same day for the falsified time record.

Following her termination, appellant sued respondent for "retaliation in violation of public policy" (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 170).[4] Respondent filed a motion for summary judgment on this and appellant's other claims, and appellant opposed the motion. The trial court granted summary adjudication as to appellant's retaliation claim, concluding, "Plaintiff concedes that Williams Lea has articulated a legitimate and non-discriminatory basis for terminating Plaintiff's employment and Plaintiff cannot establish pretext." Appellant timely appealed from the subsequent judgment.

II.
DISCUSSION

"We review the trial court's summary adjudication ruling de novo, to determine whether the moving and opposing papers show a triable issue of material fact." (*Tran v. Farmers Group, Inc.* (2002) 104 Cal.App.4th 1202, 1215.) " 'To establish a prima facie case of retaliation, the plaintiff must show (1) he or she engaged in a protected activity; (2) the employer subjected the employee to an adverse employment action; and (3) there exists a causal link between the protected activity and the employer's action. [Citations.] Once an employee establishes a prima facie case, the employer is required to offer a

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4 Appellant's second amended complaint alleged seven other causes of action, none of which is the subject of this appeal. Appellant voluntarily dismissed two causes of action, and respondent filed a motion for summary judgment as to the remaining claims. The trial court granted summary adjudication as to five causes of action (for libel, retaliation in violation of public policy, age discrimination in violation of the California Fair Employment and Housing Act (FEHA, Gov. Code, § 12900 et seq.), retaliation in violation of FEHA, and age discrimination in violation of public policy), but denied it as to appellant's claim for unpaid wages. Appellant dismissed the remaining wage claim with prejudice, then entered into a stipulated judgment that permitted her to appeal only as to those five causes of action that she had not previously dismissed. (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 308-309 [party may appeal after waiving right to litigate unresolved cause of action]; *Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1430 [same].) On appeal, appellant challenges the grant of summary adjudication only with respect to her common law cause of action for retaliation in violation of public policy, which many cases refer to as one for wrongful discharge in violation of public policy. (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 91.)

legitimate, nonretaliatory reason for the adverse employment action. [Citation.] If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation "drops out of the picture," and the burden shifts back to the employee to prove intentional retaliation. [Citation.]' [Citation.]" (*Colarossi v. Coty US Inc.* (2002) 97 Cal.App.4th 1142, 1152.)

With respect to whether appellant established a prima facie case, appellant submitted evidence that she engaged in the protected activity of complaining about age discrimination at Williams Lea, and that she was fired a short time later. (*Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 357 [plaintiff who shows she was fired a short time after protected activity establishes prima facie case of retaliation].) She stated in her declaration that she told Dolly that "I saw that she replaced all of the older employees with younger people that were her friends," and that "there were two sets of rules, [one] for us older employees and [one] for the younger employees she was bringing in, regarding timeliness and paid time off, and more generally, that she was holding us older employees under a microscope, and punishing us for even minor infractions." Respondent argues that we may disregard allegations in appellant's declaration that she complained about age discrimination, because her deposition testimony amounted to an admission that she complained about no more than "mere 'favoritism,' " which is not actionable. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21-22 [admissions against interest in depositions entitled to deference not accorded to evidentiary allegations in declarations].)

We do not read appellant's deposition testimony so narrowly. She testified that she complained to Dolly that the " 'newer,' " " 'younger' " people who previously had worked with Dolly at a different law firm were treated differently from " 'the older people' " who previously worked at Heller Ehrman. She explained that the " "younger' " people to whom she referred were the people who previously worked for a different law firm. Respondent would have us read appellant's deposition testimony as complaining about the treatment of a group of recently hired employees, without regard to how old they were. In fact, appellant testified that she told Dolly that " 'the newer people coming

in, your friends from your previous law firm, you have friendships there. They're newer. *They're younger*. They're separated in the department *from the older people . . . .*" (Italics added.) The trial court stated that appellant's declaration alleging that she complained about age discrimination was "admissible notwithstanding what may be a contradiction [at her deposition] because I don't think that the deposition testimony was clear enough for me to be able to rule that that was a clear contradiction, as would be required in order to invoke the *D'Amico* rule." We likewise agree that appellant provided sufficient evidence that she engaged in a protected activity.

As for whether appellant demonstrated " 'a causal link between the protected activity and the employer's action' " (*Colarossi v. Coty US Inc.*, *supra*, 97 Cal.App.4th at p. 1152), respondent claims that "there can be no evidence" that appellant was fired for her complaint, because the person "who was ultimately responsible for the termination decision" (Spranger, respondent's national client services director) was not even aware of appellant's favoritism complaint. However, respondent's own evidence reveals that Dolly and Spranger decided "*together*" to terminate appellant. (Italics added.) Appellant was not required to show that "every individual" who participated in the decision to fire her had a discriminatory motivation, only that "a significant participant" in the decision had such intent.[5] (*DeJung v. Superior Court* (2008) 169 Cal.App.4th 533, 551.) Dolly was such a significant participant, as she started the investigation into appellant's time entry and participated in the decision to fire appellant.

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5 This legal principal is known as the " 'cat's paw' doctrine." (*DeJung v. Superior Court, supra,* 169 Cal.App.4th at p. 551.) Respondent argues that appellant invokes this legal doctrine for the first time on appeal. In fact, the trial court questioned respondent's counsel at length at the summary judgment hearing about what weight it should give the fact that Dolly played a role in the decision to fire appellant, even if Spranger had no knowledge of appellant's complaints, and appellant's counsel stated, "I think what he's [opposing counsel] struggling with is the notion of the cat's paw [doctrine]." Respondent claims that before we take into consideration Dolly's involvement in the decision to fire appellant, "the record must affirmatively show that one of the participants in the challenged decision harbored relevant animus towards the plaintiff." Respondent conflates the issue of Dolly's involvement and whether the reason given for appellant's discharge was pretextual, an issue we address below.

Although appellant established a prima facie case of retaliation, she concedes that, for purposes of summary adjudication, respondent provided a legitimate, nondiscriminatory reason for her discharge (the fact that she falsified her time card). Where an employer provides on summary judgment a plausible justification for firing an employee, the burden is on the employee to demonstrate that the justification was "merely a pretext to cover up [the employer's] discriminatory intent," that is, the employee must show that she was the victim of unlawful retaliation. (*Colarossi v. Coty US Inc., supra*, 97 Cal.App.4th at p. 1153.) "Once an employer satisfies its initial burden of proving the legitimacy of its reason for termination, the discharged employee seeking to avert summary judgment must present *specific* and *substantial* responsive evidence that the employer's evidence was in fact insufficient or that there is a triable issue of fact material to the employer's motive. [Citation.] In other words, plaintiff must produce *substantial* responsive evidence to show that [a defendant's] ostensible motive was pretextual; that is, 'that a discriminatory reason more likely motivated the employer or that the employer's explanation is unworthy of credence.' [Citation.]" (*King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433, italics added.) " '[T]he plaintiff may establish pretext "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." ' [Citations.] Circumstantial evidence of ' "pretense" must be "*specific*" and "*substantial*" in order to create a triable issue with respect to whether the employer intended to discriminate' on an improper basis. [Citations.]" (*Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 68-69, italics added.) "Circumstantial evidence typically relates to such factors as the plaintiff's job performance, the timing of events, and how the plaintiff was treated in comparison to other workers. [Citations.]" (*Colarossi*, *supra*, at p. 1153.)

Here, appellant's circumstantial evidence that the reason provided for firing her was pretextual was not sufficiently substantial to create a triable issue on whether respondent discharged her for an improper purpose. Appellant focuses on the timing of events, noting that the decision to fire her was made within 24 hours of the meeting

where she complained about younger employees being treated differently.[6] However, "the timing of an adverse employment action is not, by itself, sufficient to raise an inference that an employer took such action for an unlawful purpose." (*Johnson v. United Cerebral Palsy/Spastic Children's Foundation* (2009) 173 Cal.App.4th 740, 757 [appeal of summary judgment], citing *King v. United Parcel Service, Inc.*, *supra*, 152 Cal.App.4th at p. 436.) Although evidence that an employee engaged in protected activity and was fired a short time later satisfies a plaintiff's initial burden to show a prima facie case of retaliation (*Arteaga v. Brink's, Inc.*, *supra*, 163 Cal.App.4th at p. 357; *McRae v. Department of Corrections & Rehabilitation* (2006) 142 Cal.App.4th 377, 388), the presumption of retaliation " ' " 'drops out of the picture' " ' " where an employer produces a legitimate reason for the adverse employment action. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042.) "Where the employee relies solely on temporal proximity in response to the employer's evidence of a nonretaliatory reason for termination, he or she does not create a triable issue as to pretext, and summary judgment for the employer is proper. [Citations.]" (*Arteaga*, *supra*, at p. 357.)

Appellant wholly fails to set forth any further specific and substantial evidence that creates a triable issue of material fact regarding pretext. She states that Dolly

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6 Respondent discounts the timing of the meeting, claiming that there was overwhelming evidence that it took place on March 28, 2007, the day after the investigation into appellant's fraudulent time entry began. Even assuming arguendo that the evidence conclusively established that the meeting took place on March 28, respondent directs us to no evidence that the decision to *terminate* appellant had taken place before the meeting. In fact, appellant testified that the meeting took place toward the end of her shift, around 2:00 p.m. The report showing when appellant and Delgado entered the building is dated March 28 and indicates that the report was run at "1:55:52PM." And it was not until 4:38 p.m. on March 28 that an IT supervisor sent an e-mail to Dolly informing her about when appellant and Delgado logged onto their computers. Dolly forwarded the documentation to Hebel and Spranger at 5:30 p.m. on March 28, and stated that she spoke to Spranger and that "together we decided it is necessary to terminate both Sandra and Jude for falsifying their time record." This evidence permits an inference that Dolly received documentation about appellant's tardiness after the meeting in which appellant complained about older employees being treated unfairly, and that she and Spranger likewise discussed firing appellant after the meeting.

"singl[ed] out [appellant's] Problem Log," and that her investigation into the disputed log entry "was completely different from Ms. Dolly's treatment of every other unclear log entry in what was asked, how it was done, and the result." She directs the court to other problem log entries that she claims are "incorrect or incomplete," but she does not identify any other entry that appeared to be fraudulent, let alone any situation where an employee was treated differently for that offense. In fact, the only other employee shown to have misrepresented his start time (Delgado) also was fired.[7] (Cf. *Iwekaogwu v. City of Los Angeles* (1999) 75 Cal.App.4th 803, 816-817 [evidence that plaintiff was treated differently from similarly situated employees can be used to show pretext].)[8]

Appellant claims that the fact Delgado was fired does not negate an inference that appellant was singled out, because Delgado also sued respondent and Dolly for wrongful termination based on the log entry. The only evidence we have regarding a lawsuit by Delgado against respondent is (1) a register of actions indicating that he sued in state court on May 29, 2007, but that the case was removed to federal court in July 2007,[9] and

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7 Although it may be true that Dolly's practice was to follow up with employees about incomplete or unclear problem log entries, Dolly testified that it was clear to her that appellant's entry indicated that she arrived at 6:00 a.m. Indeed, appellant acknowledges that the "6 a" entry was incomplete and did not reflect when she actually arrived at work. And it is simply not true that Dolly stated in her declaration "that she often knowingly let employees leave work without punching out." Rather, Dolly stated she "allowed all employees to grab coffee and breakfast on the clock so long as there was sufficient coverage at the DOCS Center while they were gone," something that was not inconsistent with respondent's policy of allowing two ten-minute rest breaks during a shift, when employees were not required to punch out.

8 The cases upon which appellant relies in arguing that she was "singled out" are distinguishable, because they involve cases where there was a genuine issue of material fact regarding whether employees were treated differently for *identical violations* of an employer's policies. (*Colarossi v. Coty US Inc.*, *supra*, 97 Cal.App.4th at p. 1154 [some employees received greater leniency than plaintiff for fraudulent behavior]; *Breitman v. May Co. California* (9th Cir. 1994) 37 F.3d 562, 563-565 [plaintiff fired for telling temporary employee to add hours to time card to reimburse her for expenses, even though plaintiff had been specifically authorized to do so in past].)

9 On September 18, 2009, this court granted appellant's unopposed request to take judicial notice of the register of actions.

(2) a "right-to-sue complaint information sheet" that Delgado apparently submitted to the Department of Fair Employment and Housing. The information sheet states that Delgado was a 54-year-old Asian male, but it does not reveal the nature of his complaint against respondent or Dolly. The record on appeal in this case does not include Delgado's complaint, any discovery that may have taken place in his separate lawsuit, or the reasons that (according to his attorney) the parties agreed to settle the lawsuit.[10] In short, evidence that Delgado sued respondent based on the same incident does not create a triable issue of fact that the stated reason for firing appellant was pretextual.

Appellant next argues that the fact she called ahead to the DOCS Center to report that she would be late "cuts against Williams Lea's claim that Ms. Dolly actually believed Ms. Chew attempted to falsify her timecard," because appellant would have "little reason to lie about her arrival time." However, appellant stated in her declaration that Delgado called ahead to Shonda Furr, the "Graveyard Shift work-flow coordinator at the DOCS Center." She also stated that Dolly was usually at home when appellant arrived at work, and that Dolly was the person who "[g]enerally" was responsible for handling problem log entries. In other words, appellant may have notified "the DOCS Center" that she was arriving late, but she did so at a time when the person who most likely would review her problem log entry was not there. This supports an inference that appellant intended to conceal on the problem log the true time she arrived, especially considering the fact she offered no evidence that the person on the graveyard shift who took Delgado's call would have reason to tell Dolly about appellant's tardiness. Dolly learned about appellant calling in late from another employee, Garcia.

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10 It may be unlikely that such information would become available at a trial, as appellant's counsel has represented in appellant's opening brief (without citation to the record) that Delgado has "agreed not to testify in support of Ms. Chew's case." Appellant testified at her own deposition that Delgado spoke to Dolly about "the two groups, the older group and the newer group, being segregated, being shunned, ostracized. The newer group got to do a lot of things or got away with doing a lot of things that we didn't." She could not remember when such a conversation took place, however, and it does not appear that appellant participated in any such discussion between Delgado and Dolly.

Finally, appellant overstates the record when she claims that she "showed that Williams Lea acted erratically in responding to [her] alleged fraud." Although respondent had an "open door" policy, appellant did not show that Dolly violated it, or that Hebel failed to comply with training requirements regarding fraud investigations.

Appellant further asserts that on the day of her alleged time card fraud, Dolly "made repeated changes" to appellant's Kronos timekeeping records for the day. She directs us to a report with 13 entries dated March 27, 2007. For three of the entries, the user is identified as "SChew6211," the "Data Source" is identified as "Time Stamp," and the action taken was to "Add Punch" at 11:46 a.m., 12:13 p.m., and 2:09 p.m. The user identified for the other entries dated March 27 is "CDolly6319." For those entries, the "Data Source" was a "Timecard Editor," and the action taken was to "Add Punch," "Delete Punch," or "Edit Punch" for various times (including 6:00 a.m.). A 6:00 a.m. entry was deleted once and edited twice. Dolly testified that she did not recall what each of the entries was, and that she was not familiar with the report. She also testified that she did not recall "what entry [she] was editing or deleting," but that she did recall "having a conversation with Human Resource[s], telling me not to input the entry, because we knew it was incorrect." Appellant contends that the edits were a sign that there was a "rash of irregularities and rush to action." However, it is unclear what "action" Dolly was taking with respect to the March 27 timekeeping entries, and whether that action was a departure from regular procedure. The report indicates that similar actions ("Add Punch," "Edit Punch," etc.) were taken on various other dates for different "users."

To avoid summary judgment where an employer has provided a legitimate, nondiscriminatory reason for an employment decision, an employee "can not 'simply show the employer's decision was wrong, mistaken, or unwise. Rather, the employee " 'must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them "unworthy of credence," [citation], and hence infer "that the employer did not act for the [. . . asserted] non-discriminatory

reasons." [Citations.]' [Citations.]" [Citation.]' [Citation.]" (*Morgan v. Regents of University of California*, *supra*, 88 Cal.App.4th at p. 75, original italics.) Firing appellant for misrepresenting that she arrived at work less than a half hour late may appear harsh or "unwise" (*ibid.*); however, appellant demonstrated no weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in respondent's reason for firing her that justified going to trial on her retaliation claim. For the same reason, we also reject appellant's argument that Dolly's "state of mind" is a disputed issue of fact (Code Civ. Proc., § 437c, subd. (e)), without further evidence supporting an inference that appellant was discharged for an unlawful reason.

III.
DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

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Sepulveda, J.

We concur:

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Reardon, Acting P.J.

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Rivera, J.